

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE McNEAL,

Plaintiff,

v.

LOCKIE, ERVIN, CHATHAM, and
VAN LEER,

Defendants.

No. 2:05-cv-00441-GEB-EFB

**ORDER DENYING PLAINTIFF'S
MOTIONS FOR RECONSIDERATION**

On June 22, 2015, Plaintiff filed a motion, (ECF No. 222), in which he seeks reconsideration of the Magistrate Judge's June 5, 2015 order denying his request for an expert witnesses concerning "the use of force and medical issues." (Pl.'s Decl. Supp. Mot. Requesting Experts 1, ECF No. 203.) The Magistrate Judge denied Plaintiff's request in that order stating, *inter alia*:

[Plaintiff] has not shown that such . . . expert[s] are] needed to promote accurate fact-finding. He simply asserts, "Defendant's experts only want to talk about the use of force and plaintiff's injuries. Plaintiff wants to show the jury the use of force and plaintiff's injuries with the aid of experts." ECF No. 203 at 3. Plaintiff has not indicated what useful information a neutral expert would provide that will not otherwise be presented to the court. See Gorton v.

1 Todd, 793 F. Supp. 2d 1171, 1177-78 (E.D.
2 Cal. 2011) (the court's determination to
3 appoint a neutral expert is guided by its
4 consideration of whether the expert will
5 promote accurate fact-finding, the ability of
6 the indigent party to obtain an expert on his
7 own, and the significance of the rights at
8 stake in the case).

9 (Order 1:26-2:6, June 5, 2015, ECF No. 213.)

10 Also, on June 25, 2015, Plaintiff filed a motion, (ECF
11 No. 223), in which he seeks reconsideration of the Magistrate
12 Judge's June 15, 2015 order denying his request for a "neutral
13 psychiatric expert to explain the effects of . . . excessive
14 force on [P]laintiff['s] mental health." (Pl.'s Decl. Supp. Mot.
15 Requesting Neutral Psychiatric Expert 1, ECF No. 212.) The
16 Magistrate Judge denied Plaintiff's request in that order
17 stating, *inter alia*:

18 To appoint a neutral expert, the court must
19 find that, among other things, . . . the
20 expert is necessary to promote accurate fact-
21 finding. It is not clear that plaintiff is
22 unqualified to testify to the effects of the
23 alleged excessive force on his mental health.
24 Under Federal Rule of Evidence 701, a lay
25 witness may testify to opinions that are: (1)
26 rationally based on the witness's perception;
27 (2) helpful to clearly understanding the
28 witness's testimony or to determining a fact
29 in issue; and (3) not based on scientific,
30 technical, or other specialized knowledge
31 within the scope of Rule 702. . . . To the
32 extent that plaintiff's testimony will simply
33 contain a description of his symptoms,
34 diagnoses, or opinions that any lay person
35 could make based on his symptoms, such
36 testimony is admissible under Rule 701 and no
37 expert is necessary to advance it. Further,
38 plaintiff has not shown that this case
39 presents rare circumstances which warrant the
40 appointment of the court's own expert.

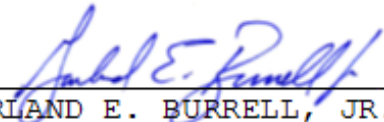
41 (Order 1:26-2:14, June 15, 2015, ECF No. 219 (internal quotation
42 marks and citation omitted).)

1 Local Rule 303(f) states "[t]he standard that the
2 assigned Judge shall use in [reconsideration of a Magistrate
3 Judge's ruling] is the 'clearly erroneous or contrary to law'
4 standard set forth in 28 U.S.C. § 636(b)(1)(A)." "A [M]agistrate
5 [J]udge's factual findings are 'clearly erroneous' when the
6 district court is left with the definite and firm conviction that
7 a mistake has been committed." Mackey v. Frazier Park Pub. Util.
8 Dist., No. 1:12-CV-00116-LJO-JLT, 2012 WL 5304758, at *2 (E.D.
9 Cal. Oct. 25, 2012) (quoting Sec. Farms v. Int'l Bhd. of
10 Teamsters, 124 F.3d 999, 1014 (9th Cir. 1997)). "An order 'is
11 contrary to law when it fails to apply or misapplies relevant
12 statutes, case law, or rules of procedure.'" Id. (quoting Knutson
13 v. Blue Cross & Blue Shield of Minn., 254 F.R.D. 553, 556 (D.
14 Minn. 2008)).

15 Plaintiff has not shown that the Magistrate Judge's
16 referenced decisions denying his requests for the appointment of
17 expert witnesses were clearly erroneous or contrary to law. See
18 e.g., Robinson v. Adams, No. 1:08-cv-01380-AWI-BAN PC, 2014 WL
19 6461342, at *2 (E.D. Cal. Nov. 17, 2014) (denying reconsideration
20 of the magistrate judge's decision denying the plaintiff's
21 request for the appointment of an expert witness regarding use of
22 force procedures, stating "[t]he Magistrate Judge . . . correctly
23 determined that Plaintiff's allegations of excessive force are
24 not so complicated as to require an expert witness"); Trufariello
25 v. Long Island R. R. Co., 458 F.3d 80, 90 (2d Cir. 2006) ("A
26 witness's testimony as to the pain he . . . experienced is
27 admissible under Rule 701 to show the cause and extent of such
28 injuries if it is based on the witness's own perceptions.").

1 Therefore, each of Plaintiff's requests for reconsideration, (ECF
2 Nos. 222, 223), is DENIED.

3 Dated: July 2, 2015

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7 GARIAND E. BURRELL, JR.
8 Senior United States District Judge
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